



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

December 3, 2010

Jason Smathers
MuckRock
185 Beacon Street #3
Somerville, Massachusetts 02143

Dear Mr. Smathers:

This is in response to your Freedom of Information Act (FOIA) request dated November 26, 2010, in which you requested the following:

"All emails and corresponding attachments sent to (to:, cc: or bcc:) or from Eric K. Shinseki (or any person who communicates on his behalf) where the email contains any of the following keywords in the subject or body: "just between us" "breach" "big trouble" "too late" "stupid" "bad company" "perception issue" "the real objective" "very slippery slope" or "true disaster"."

With respect to your request:

1. The FOIA Service received your request on December 3, 2010, and assigned it FOIA number 11-01706-F. Please refer to this number when communicating with this office about your request.
2. Your request does not comply with published agency regulations which implemented the FOIA and required that a FOIA request be signed. That requirement is found at 38 C.F.R. 1553(b). We will be unable to process your request until such time as we receive one that is signed. Should you wish to resubmit a request, please be advised that the records you seek, if they exist, would be maintained by the Office of the Secretary (SEC). You may submit your signed request directly to the following address:

Department of Veterans Affairs
Office of the Secretary (001B)
810 Vermont Avenue, NW
FOIA Officer: Paulette Saunders
Washington, DC 20420

3. In your request, you request that fees be waived for the processing of your request. The FOIA permits documents to be furnished without charge (or at a reduced rate) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and is not primarily in the commercial interest of the requester.

In accordance with 38 CFR Sec. 1.555(f), we must consider the following factors to determine if you are entitled to a fee waiver (or fee reduction):

- The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government;
- The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Government operations or activities;
- The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and
- The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.

In addition, the last two factors will be used to determine if disclosure of the records is primarily in the commercial interest of the requester:

- The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so
- The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is significantly large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

If you address these factors in your response, we will consider your request for a fee waiver/fee reduction.

If your fee waiver request is denied, we will provide you with a fee estimate before we begin the record search.

4. Furthermore, in order to be categorized as a requester of the news media, you must be a person or entity that gathers information of potential interest to a segment of the public, and use your editorial skills to turn the raw materials into a distinct work, and distribute that work to an audience. Please be advised that the D.C. Circuit also held in National Security Archive (see Nat'l Sec. Archive, 880 F.2d at 1386) that merely making the information received available to the public (or others) was not sufficient to quantify a requester for placement in this category.

5. If you consider this response to be an adverse determination, under 38 C.F.R. Sec. 1.557, you have the right to appeal this response by writing to: the Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C. 20420. The envelope and the letter should be marked: "FREEDOM OF

INFORMATION ACT APPEAL." Include a copy of this letter, your original request and the reason for you appeal. You may also include a daytime telephone number in case the Office of General Counsel needs additional information.

This concludes the FOIA Service's response to your request.

We appreciate your interest in the Department of Veterans Affairs. Customer service is very important to us. If you have questions about this letter, please contact Georges Eid of my staff at 202-461-6705 and refer to case number 11-01706-F.

Sincerely,

A handwritten signature in cursive script that reads "Clay Johnson". The signature is written in black ink and is positioned above the printed name and title.

Clay Johnson
Acting Service Director